

REFERENCE TITLE: ignition strength of cigarettes; regulation

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2483

Introduced by
Representatives McComish, Reagan, Schapira: Boone, Clark, Driggs, Robson,
Thrasher

AN ACT

AMENDING TITLE 41, CHAPTER 16, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.1; PROVIDING FOR THE CONDITIONAL REPEAL OF SECTIONS 41-2170, 41-2170.01, 41-2170.02, 41-2170.03, 41-2170.04, 41-2170.05, 41-2170.06 AND 41-2170.07, ARIZONA REVISED STATUTES; RELATING TO THE REGULATION OF CIGARETTE MATERIALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 16, Arizona Revised Statutes, is amended
3 by adding article 3.1, to read:

4 ARTICLE 3.1. REDUCED CIGARETTE IGNITION PROPENSITY

5 41-2170. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "AGENT" MEANS A PERSON WHO IS AUTHORIZED BY THE DEPARTMENT OF
8 REVENUE TO PURCHASE AND AFFIX STAMPS ON PACKAGES OF CIGARETTES.

9 2. "CIGARETTE" MEANS ANY ROLL OF TOBACCO OR ANY SUBSTITUTE FOR TOBACCO
10 WRAPPED IN PAPER OR ANY SUBSTANCE NOT CONTAINING TOBACCO.

11 3. "MANUFACTURER" MEANS:

12 (a) AN ENTITY THAT MANUFACTURES OR OTHERWISE PRODUCES CIGARETTES OR
13 CAUSES CIGARETTES TO BE MANUFACTURED OR PRODUCED ANYWHERE AND THAT THE
14 MANUFACTURER INTENDS TO BE SOLD IN THIS STATE, INCLUDING CIGARETTES THAT ARE
15 INTENDED TO BE SOLD IN THE UNITED STATES THROUGH AN IMPORTER.

16 (b) THE FIRST PURCHASER ANYWHERE THAT INTENDS TO RESELL IN THE UNITED
17 STATES CIGARETTES THAT ARE MANUFACTURED ANYWHERE AND THAT THE ORIGINAL
18 MANUFACTURER OR MAKER DOES NOT INTEND TO BE SOLD IN THE UNITED STATES.

19 (c) A SUCCESSOR ENTITY TO AN ENTITY DESCRIBED IN SUBDIVISION (a) OR
20 (b) OF THIS PARAGRAPH.

21 4. "QUALITY CONTROL AND QUALITY ASSURANCE PROGRAM" MEANS THE
22 LABORATORY PROCEDURES IMPLEMENTED TO ENSURE:

23 (a) THAT OPERATOR BIAS, SYSTEMATIC AND NONSYSTEMATIC METHODOLOGICAL
24 ERRORS AND EQUIPMENT RELATED PROBLEMS DO NOT AFFECT THE RESULTS OF THE
25 TESTING.

26 (b) THAT THE TESTING REPEATABILITY REMAINS WITHIN THE REQUIRED
27 REPEATABILITY VALUES PRESCRIBED IN SECTION 41-2170.01, SUBSECTION B,
28 PARAGRAPH 6 FOR ALL TEST TRIALS THAT ARE USED TO CERTIFY CIGARETTES PURSUANT
29 TO THIS ARTICLE.

30 5. "REPEATABILITY" MEANS THE RANGE OF VALUES WITHIN WHICH THE REPEAT
31 RESULTS OF CIGARETTE TEST TRIALS FROM A SINGLE LABORATORY WILL FALL
32 NINETY-FIVE PER CENT OF THE TIME.

33 6. "RETAILER" MEANS ANY PERSON, OTHER THAN A MANUFACTURER OR
34 WHOLESALER, WHO IS ENGAGED IN SELLING CIGARETTES OR TOBACCO PRODUCTS.

35 7. "SALE" MEANS A TRANSFER OF TITLE OR POSSESSION, OR BOTH, OR AN
36 EXCHANGE OR BARTER, CONDITIONAL OR OTHERWISE, IN ANY MANNER OR BY ANY MEANS
37 WHATEVER OR ANY AGREEMENT TO TRANSFER, EXCHANGE OR BARTER. SALE INCLUDES THE
38 GIVING OF CIGARETTES AS SAMPLES, PRIZES OR GIFTS AND THE EXCHANGING OF
39 CIGARETTES FOR ANY CONSIDERATION OTHER THAN MONEY.

40 8. "SELL" MEANS TO SELL OR TO OFFER OR AGREE TO SELL.

41 9. "WHOLESALER" MEANS A PERSON, OTHER THAN A MANUFACTURER, WHO SELLS
42 CIGARETTES OR TOBACCO PRODUCTS TO RETAILERS OR OTHER PERSONS FOR RESALE, AND
43 ANY PERSON WHO OWNS, OPERATES OR MAINTAINS ONE OR MORE CIGARETTE OR TOBACCO
44 PRODUCT VENDING MACHINES IN, AT OR ON PREMISES OWNED OR OCCUPIED BY ANY OTHER
45 PERSON.

1 D. A MANUFACTURER OF A CIGARETTE THAT THE STATE FIRE MARSHAL
2 DETERMINES CANNOT BE TESTED PURSUANT TO THE TEST METHOD PRESCRIBED IN
3 SUBSECTION B, PARAGRAPH 1 OF THIS SECTION SHALL PROPOSE A TEST METHOD AND
4 PERFORMANCE STANDARD FOR THE CIGARETTE TO THE STATE FIRE MARSHAL. ON
5 APPROVAL OF THE PROPOSED TEST METHOD AND A DETERMINATION BY THE STATE FIRE
6 MARSHAL THAT THE PERFORMANCE STANDARD PROPOSED BY THE MANUFACTURER IS
7 EQUIVALENT TO THE PERFORMANCE STANDARD PRESCRIBED IN SUBSECTION B, PARAGRAPH
8 3 OF THIS SECTION, THE MANUFACTURER MAY EMPLOY THAT TEST METHOD AND
9 PERFORMANCE STANDARD TO CERTIFY THE CIGARETTE PURSUANT TO SECTION 41-2170.02.
10 IF THE STATE FIRE MARSHAL DETERMINES THAT ANOTHER STATE HAS ENACTED REDUCED
11 CIGARETTE IGNITION PROPENSITY STANDARDS THAT INCLUDE A TEST METHOD AND
12 PERFORMANCE STANDARD THAT ARE THE SAME AS THOSE PRESCRIBED IN THIS ARTICLE,
13 AND THE STATE FIRE MARSHAL FINDS THAT THE OFFICIALS RESPONSIBLE FOR
14 IMPLEMENTING THOSE REQUIREMENTS HAVE APPROVED THE PROPOSED ALTERNATIVE TEST
15 METHOD AND PERFORMANCE STANDARD FOR A PARTICULAR CIGARETTE PROPOSED BY A
16 MANUFACTURER AS MEETING THE FIRE SAFETY STANDARDS OF THAT STATE'S LAW OR
17 REGULATION UNDER A LEGAL PROVISION COMPARABLE TO THIS SECTION, THE STATE FIRE
18 MARSHAL SHALL AUTHORIZE THAT MANUFACTURER TO EMPLOY THE ALTERNATIVE TEST
19 METHOD AND PERFORMANCE STANDARD TO CERTIFY THAT CIGARETTE FOR SALE IN THIS
20 STATE, UNLESS THE STATE FIRE MARSHAL DEMONSTRATES A REASONABLE BASIS WHY THE
21 ALTERNATIVE TEST SHOULD NOT BE ACCEPTED PURSUANT TO THIS ARTICLE. ALL OTHER
22 APPLICABLE REQUIREMENTS OF THIS SECTION APPLY TO THE MANUFACTURER.

23 E. EACH MANUFACTURER SHALL MAINTAIN COPIES OF THE REPORTS OF ALL TESTS
24 CONDUCTED ON ALL CIGARETTES OFFERED FOR SALE FOR THREE YEARS AND SHALL MAKE
25 COPIES OF THESE REPORTS AVAILABLE TO THE STATE FIRE MARSHAL AND THE ATTORNEY
26 GENERAL ON WRITTEN REQUEST. ANY MANUFACTURER WHO FAILS TO MAKE COPIES OF
27 THESE REPORTS AVAILABLE WITHIN SIXTY DAYS AFTER RECEIVING A WRITTEN REQUEST
28 IS SUBJECT TO A CIVIL PENALTY OF NOT TO EXCEED TEN THOUSAND DOLLARS FOR EACH
29 DAY AFTER THE SIXTIETH DAY THAT THE MANUFACTURER DOES NOT MAKE THE COPIES
30 AVAILABLE.

31 F. THE STATE FIRE MARSHAL MAY ADOPT A SUBSEQUENT AMERICAN SOCIETY OF
32 TESTING AND MATERIALS STANDARD TEST METHOD FOR MEASURING THE IGNITION
33 STRENGTH OF CIGARETTES ON A FINDING THAT THE SUBSEQUENT METHOD DOES NOT
34 RESULT IN A CHANGE IN THE PERCENTAGE OF FULL-LENGTH BURNS EXHIBITED BY ANY
35 TESTED CIGARETTE IF COMPARED TO THE PERCENTAGE OF FULL-LENGTH BURNS THE SAME
36 CIGARETTE WOULD EXHIBIT IF IT WERE TESTED PURSUANT TO THE AMERICAN SOCIETY OF
37 TESTING AND MATERIALS STANDARD E2187-04 AND THE PERFORMANCE STANDARD
38 PRESCRIBED IN SUBSECTION B, PARAGRAPH 3 OF THIS SECTION.

39 G. THE STATE FIRE MARSHAL SHALL REVIEW THE EFFECTIVENESS OF THIS
40 SECTION AND REPORT EVERY THREE YEARS TO THE LEGISLATURE ON THE STATE FIRE
41 MARSHAL'S FINDINGS AND ANY RECOMMENDATIONS FOR LEGISLATION TO IMPROVE THE
42 EFFECTIVENESS OF THIS SECTION. THE STATE FIRE MARSHAL SHALL SUBMIT THE
43 REPORT AND LEGISLATIVE RECOMMENDATIONS ON OR BEFORE JULY 1 OF EACH THREE-YEAR
44 PERIOD.

1 H. THE STATE FIRE MARSHAL SHALL NOTIFY THE GOVERNOR, THE SPEAKER OF
2 THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE IN WRITING
3 IMMEDIATELY AFTER A FEDERAL REDUCED CIGARETTE IGNITION PROPENSITY STANDARD
4 THAT PREEMPTS THE STANDARD PRESCRIBED IN THIS ARTICLE BECOMES EFFECTIVE.
5 I. THIS SECTION DOES NOT PROHIBIT EITHER OF THE FOLLOWING:
6 1. WHOLESALERS OR RETAILERS FROM SELLING THEIR EXISTING INVENTORY OF
7 CIGARETTES ON OR AFTER AUGUST 1, 2009 IF THE WHOLESALER OR RETAILER CAN
8 ESTABLISH THAT STATE TAX STAMPS WERE AFFIXED TO THE CIGARETTES BEFORE AUGUST
9 1, 2009 AND THE WHOLESALER OR RETAILER CAN ESTABLISH THAT THE INVENTORY WAS
10 PURCHASED BEFORE AUGUST 1, 2009 IN COMPARABLE QUANTITY TO THE INVENTORY
11 PURCHASED DURING THE SAME PERIOD OF THE PRIOR YEAR.
12 2. THE SALE OF CIGARETTES SOLELY FOR THE PURPOSE OF CONSUMER TESTING.
13 FOR THE PURPOSES OF THIS PARAGRAPH, "CONSUMER TESTING" MEANS AN ASSESSMENT OF
14 CIGARETTES THAT IS CONDUCTED BY A MANUFACTURER, OR UNDER THE CONTROL AND
15 DIRECTION OF A MANUFACTURER, FOR THE PURPOSE OF EVALUATING CONSUMER
16 ACCEPTANCE OF THE CIGARETTES, USING ONLY THE QUANTITY OF CIGARETTES THAT IS
17 REASONABLY NECESSARY FOR SUCH AN ASSESSMENT.
18 J. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.
19 41-2170.02. Certification; product change; fee
20 A. EACH MANUFACTURER SHALL SUBMIT TO THE STATE FIRE MARSHAL A WRITTEN
21 CERTIFICATION ATTESTING THAT:
22 1. EACH CIGARETTE LISTED IN THE CERTIFICATION HAS BEEN TESTED PURSUANT
23 TO SECTION 41-2170.01.
24 2. EACH CIGARETTE LISTED IN THE CERTIFICATION MEETS THE PERFORMANCE
25 STANDARDS PRESCRIBED IN SECTION 41-2170.01.
26 B. THE MANUFACTURER SHALL DESCRIBE EACH CIGARETTE LISTED IN THE
27 CERTIFICATION WITH THE FOLLOWING INFORMATION:
28 1. BRAND OR TRADE NAME ON THE PACKAGE.
29 2. STYLE, SUCH AS LIGHT OR ULTRA LIGHT.
30 3. LENGTH IN MILLIMETERS.
31 4. CIRCUMFERENCE IN MILLIMETERS.
32 5. FLAVOR, SUCH AS MENTHOL OR CHOCOLATE, IF APPLICABLE.
33 6. FILTER OR NONFILTER.
34 7. PACKAGE DESCRIPTION, SUCH AS SOFT PACK OR BOX.
35 8. MARKING APPROVED PURSUANT TO SECTION 41-2170.03.
36 9. THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE LABORATORY, IF
37 DIFFERENT THAN THE MANUFACTURER THAT CONDUCTED THE TEST.
38 10. THE DATE THAT THE TESTING OCCURRED.
39 C. A MANUFACTURER SHALL RECERTIFY EACH CIGARETTE CERTIFIED UNDER THIS
40 SECTION EVERY THREE YEARS.
41 D. A MANUFACTURER SHALL MAKE THE CERTIFICATIONS AVAILABLE TO THE
42 ATTORNEY GENERAL FOR PURPOSES CONSISTENT WITH THIS ARTICLE AND THE DEPARTMENT
43 OF REVENUE FOR THE PURPOSES OF ENSURING COMPLIANCE WITH THIS SECTION.
44 E. IF A MANUFACTURER HAS CERTIFIED A CIGARETTE PURSUANT TO THIS
45 SECTION AND AFTER CERTIFICATION MAKES ANY CHANGE TO THE CIGARETTE THAT IS

1 LIKELY TO ALTER ITS COMPLIANCE WITH THE REDUCED CIGARETTE IGNITION PROPENSITY
2 STANDARDS PRESCRIBED BY THIS ARTICLE, THAT CIGARETTE SHALL NOT BE SOLD OR
3 OFFERED FOR SALE IN THIS STATE UNTIL THE MANUFACTURER RETESTS THE CIGARETTE
4 PURSUANT TO THE TESTING STANDARDS PRESCRIBED IN SECTION 41-2170.01 AND
5 MAINTAINS RECORDS OF THAT RETESTING AS REQUIRED BY SECTION 41-2170.01. ANY
6 ALTERED CIGARETTE THAT DOES NOT MEET THE PERFORMANCE STANDARD PRESCRIBED IN
7 SECTION 41-2170.01 MAY NOT BE SOLD IN THIS STATE.

8 F. THE STATE FIRE MARSHAL MAY ADOPT RULES REQUIRING EACH MANUFACTURER
9 TO PAY TO THE STATE FIRE MARSHAL A FEE OF TWO HUNDRED FIFTY DOLLARS PER BRAND
10 FAMILY OF CIGARETTES CERTIFIED IN COMPLIANCE WITH THIS SECTION. THE FEE
11 APPLIES TO ALL CIGARETTES WITHIN THE BRAND FAMILY CERTIFIED AND INCLUDES ANY
12 NEW CIGARETTE BRAND STYLE WITHIN THE BRAND FAMILY DURING THE THREE-YEAR
13 CERTIFICATION PERIOD.

14 G. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

15 41-2170.03. Markings; requirements; fire marshal approval

16 A. A MANUFACTURER SHALL MARK CIGARETTES THAT ARE CERTIFIED PURSUANT TO
17 SECTION 41-2170.02 TO INDICATE COMPLIANCE WITH SECTION 41-2170.01. THE
18 MARKING SHALL BE IN AT LEAST EIGHT POINT TYPE AND SHALL CONSIST OF EITHER:

19 1. MODIFICATION OF THE PRODUCT UPC CODE TO INCLUDE A VISIBLE MARK
20 PRINTED AT OR AROUND THE AREA OF THE UPC CODE. THE MARK MAY CONSIST OF
21 ALPHANUMERIC OR SYMBOLIC CHARACTERS PERMANENTLY STAMPED, ENGRAVED, EMBOSSED
22 OR PRINTED IN CONJUNCTION WITH THE UPC CODE.

23 2. ANY VISIBLE COMBINATION OF ALPHANUMERIC OR SYMBOLIC CHARACTERS
24 PERMANENTLY STAMPED, ENGRAVED OR EMBOSSED ON THE CIGARETTE PACKAGE OR
25 CELLOPHANE WRAP.

26 3. PRINTED, STAMPED, ENGRAVED OR EMBOSSED TEXT THAT INDICATES THAT THE
27 CIGARETTES MEET THE STANDARDS OF THIS SECTION.

28 B. A MANUFACTURER SHALL USE ONLY ONE MARKING AND SHALL APPLY THIS
29 MARKING UNIFORMLY FOR ALL PACKAGES, INCLUDING PACKS, CARTONS AND CASES, AND
30 BRANDS MARKETED BY THAT MANUFACTURER.

31 C. BEFORE THE CERTIFICATION OF ANY CIGARETTE, A MANUFACTURER SHALL
32 PRESENT ITS PROPOSED MARKING TO THE STATE FIRE MARSHAL FOR APPROVAL.
33 PROPOSED MARKINGS ARE DEEMED APPROVED IF THE STATE FIRE MARSHAL FAILS TO ACT
34 WITHIN TEN BUSINESS DAYS AFTER RECEIVING A REQUEST FOR APPROVAL. ON RECEIPT
35 OF THE REQUEST, THE STATE FIRE MARSHAL SHALL APPROVE OR DISAPPROVE THE
36 MARKING OFFERED, EXCEPT THAT THE STATE FIRE MARSHAL SHALL APPROVE EITHER OF
37 THE FOLLOWING:

38 1. ANY MARKING IN USE AND APPROVED FOR SALE IN NEW YORK STATE PURSUANT
39 TO THE NEW YORK FIRE SAFETY STANDARDS FOR CIGARETTES IN SECTION 156-c OF THE
40 NEW YORK EXECUTIVE LAW AND PART 429 OF TITLE 19 OF THE NEW YORK CODE OF RULES
41 AND REGULATIONS.

42 2. THE LETTERS "FSC", WHICH SIGNIFY FIRE STANDARDS COMPLIANT,
43 APPEARING IN EIGHT POINT TYPE OR LARGER AND PERMANENTLY PRINTED, STAMPED,
44 ENGRAVED OR EMBOSSED ON THE PACKAGE AT OR NEAR THE UPC CODE.

1 D. A MANUFACTURER SHALL NOT MODIFY ITS APPROVED MARKING UNLESS THE
2 MODIFICATION HAS BEEN APPROVED BY THE STATE FIRE MARSHAL PURSUANT TO THIS
3 SECTION.

4 E. MANUFACTURERS CERTIFYING CIGARETTES PURSUANT TO SECTION 41-2170.02
5 SHALL PROVIDE A COPY OF THE CERTIFICATIONS TO ALL WHOLESALERS AND AGENTS TO
6 WHOM THEY SELL CIGARETTES AND SHALL ALSO PROVIDE SUFFICIENT COPIES OF AN
7 ILLUSTRATION OF THE PACKAGE MARKING USED BY THE MANUFACTURER PURSUANT TO THIS
8 SECTION FOR EACH RETAILER TO WHOM THE WHOLESALERS OR AGENTS SELL CIGARETTES.
9 WHOLESALERS AND AGENTS SHALL PROVIDE A COPY OF THESE PACKAGE MARKINGS
10 RECEIVED FROM MANUFACTURERS TO ALL RETAILERS TO WHOM THEY SELL CIGARETTES.
11 WHOLESALERS, AGENTS AND RETAILERS SHALL PERMIT THE STATE FIRE MARSHAL, THE
12 DEPARTMENT OF REVENUE OR THE ATTORNEY GENERAL, OR THEIR EMPLOYEES, TO INSPECT
13 MARKINGS OF CIGARETTE PACKAGING MARKED PURSUANT TO THIS SECTION.

14 F. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

15 41-2170.04. Civil penalties

16 A. A MANUFACTURER, WHOLESALER, AGENT OR OTHER PERSON OR ENTITY THAT
17 KNOWINGLY SELLS OR OFFERS TO SELL CIGARETTES, OTHER THAN THROUGH RETAIL SALE,
18 IN VIOLATION OF SECTION 41-2170.01 IS SUBJECT TO A CIVIL PENALTY OF NOT TO
19 EXCEED ONE HUNDRED DOLLARS FOR EACH PACK OF CIGARETTES SOLD OR OFFERED FOR
20 SALE. THIS PENALTY SHALL NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS DURING ANY
21 THIRTY-DAY PERIOD.

22 B. A RETAILER WHO KNOWINGLY SELLS OR OFFERS TO SELL CIGARETTES IN
23 VIOLATION OF SECTION 41-2170.01 IS SUBJECT TO A CIVIL PENALTY OF NOT TO
24 EXCEED ONE HUNDRED DOLLARS FOR EACH PACK OF CIGARETTES SOLD OR OFFERED FOR
25 SALE. THIS PENALTY SHALL NOT EXCEED ONE THOUSAND DOLLARS DURING ANY
26 THIRTY-DAY PERIOD.

27 C. IN ADDITION TO ANY PENALTY PRESCRIBED BY LAW, ANY CORPORATION,
28 PARTNERSHIP, SOLE PROPRIETOR, LIMITED PARTNERSHIP OR ASSOCIATION THAT IS
29 ENGAGED IN THE MANUFACTURE OF CIGARETTES AND THAT KNOWINGLY MAKES A FALSE
30 CERTIFICATION PURSUANT TO SECTION 41-2170.02 IS SUBJECT TO A CIVIL PENALTY OF
31 AT LEAST TWENTY-FIVE THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED THOUSAND
32 DOLLARS FOR EACH FALSE CERTIFICATION.

33 D. A PERSON WHO VIOLATES ANY OTHER PROVISION OF THIS ARTICLE IS
34 SUBJECT TO A CIVIL PENALTY FOR A FIRST OFFENSE OF NOT TO EXCEED ONE THOUSAND
35 DOLLARS AND A CIVIL PENALTY OF NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH
36 SUBSEQUENT VIOLATION.

37 E. ANY CIGARETTES THAT HAVE BEEN SOLD OR OFFERED FOR SALE AND THAT DO
38 NOT COMPLY WITH THE PERFORMANCE STANDARD PRESCRIBED BY SECTION 41-2170.01 ARE
39 SUBJECT TO FORFEITURE AND, ON FORFEITURE, SHALL BE DESTROYED. BEFORE THE
40 DESTRUCTION OF ANY FORFEITED CIGARETTE, THE TRUE HOLDER OF THE TRADEMARK
41 RIGHTS IN THE CIGARETTE BRAND MAY INSPECT THE CIGARETTE.

42 F. IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, THE STATE FIRE
43 MARSHAL OR THE ATTORNEY GENERAL MAY FILE AN ACTION IN THE SUPERIOR COURT FOR
44 INJUNCTIVE RELIEF OR TO RECOVER ANY COSTS OR DAMAGES SUFFERED BY THIS STATE
45 BECAUSE OF A VIOLATION OF THIS SECTION, INCLUDING ENFORCEMENT COSTS RELATING

1 TO THE SPECIFIC VIOLATION AND ATTORNEY FEES. EACH VIOLATION OF THIS SECTION
2 OR RULES ADOPTED PURSUANT TO THIS SECTION IS A SEPARATE CIVIL VIOLATION FOR
3 WHICH THE STATE FIRE MARSHAL OR ATTORNEY GENERAL MAY OBTAIN RELIEF.

4 G. IF A LAW ENFORCEMENT OFFICER OR DULY AUTHORIZED REPRESENTATIVE OF
5 THE STATE FIRE MARSHAL DISCOVERS CIGARETTES THAT HAVE NOT BEEN MARKED AS
6 REQUIRED BY SECTION 41-2170.03, THE OFFICER OR REPRESENTATIVE MAY SEIZE AND
7 TAKE POSSESSION OF THE CIGARETTES. THE CIGARETTES SHALL BE TURNED OVER TO
8 THE DEPARTMENT OF REVENUE AND SHALL BE FORFEITED TO THE STATE. CIGARETTES
9 SEIZED PURSUANT TO THIS SECTION SHALL BE DESTROYED. BEFORE THE DESTRUCTION
10 OF ANY SEIZED CIGARETTE, THE TRUE HOLDER OF THE TRADEMARK RIGHTS IN THE
11 CIGARETTE BRAND MAY INSPECT THE CIGARETTE.

12 H. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

13 41-2170.05. Implementation; rule making; inspection of
14 cigarettes; definitions

15 A. THE STATE FIRE MARSHAL SHALL IMPLEMENT THIS ARTICLE PURSUANT TO THE
16 IMPLEMENTATION AND SUBSTANCE OF THE NEW YORK FIRE SAFETY STANDARDS FOR
17 CIGARETTES IN SECTION 156-c OF THE NEW YORK EXECUTIVE LAW AND PART 429 OF
18 TITLE 19 OF THE NEW YORK CODE OF RULES AND REGULATIONS.

19 B. THE STATE FIRE MARSHAL MAY ADOPT RULES TO ENFORCE THIS ARTICLE.

20 C. AS AUTHORIZED PURSUANT TO SECTION 42-3151, THE DEPARTMENT OF
21 REVENUE IN THE REGULAR COURSE OF CONDUCTING INSPECTIONS OF CIGARETTE
22 DISTRIBUTORS AND RETAILERS MAY INSPECT CIGARETTES TO DETERMINE IF THE
23 CIGARETTES ARE MARKED AS REQUIRED BY SECTION 41-2170.03. IF THE CIGARETTES
24 ARE NOT MARKED AS REQUIRED, THE DEPARTMENT OF REVENUE SHALL NOTIFY THE STATE
25 FIRE MARSHAL.

26 D. THIS SECTION APPLIES BEGINNING AUGUST 1, 2009.

27 E. FOR THE PURPOSES OF THIS SECTION, "CIGARETTE", "CIGARETTE
28 DISTRIBUTOR" AND "RETAILER" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION
29 42-3001.

30 41-2170.06. Inspection

31 BEGINNING AUGUST 1, 2009, TO ENFORCE THIS ARTICLE, THE ATTORNEY GENERAL
32 AND THE STATE FIRE MARSHAL MAY EXAMINE THE BOOKS, PAPERS, INVOICES AND OTHER
33 RECORDS OF ANY PERSON IN POSSESSION, CONTROL OR OCCUPANCY OF ANY PREMISES
34 WHERE CIGARETTES ARE PLACED, STORED, SOLD OR OFFERED FOR SALE, AS WELL AS THE
35 STOCK OF CIGARETTES ON THE PREMISES. EACH PERSON IN THE POSSESSION, CONTROL
36 OR OCCUPANCY OF ANY PREMISES WHERE CIGARETTES ARE PLACED, SOLD OR OFFERED FOR
37 SALE SHALL ALLOW THE ATTORNEY GENERAL AND THE STATE FIRE MARSHAL THE MEANS,
38 FACILITIES AND OPPORTUNITY FOR THE EXAMINATIONS AUTHORIZED BY THIS SECTION.

39 41-2170.07. Sale outside of state

40 BEGINNING AUGUST 1, 2009, THIS ARTICLE DOES NOT PROHIBIT ANY PERSON OR
41 ENTITY FROM MANUFACTURING OR SELLING CIGARETTES THAT DO NOT MEET THE
42 REQUIREMENTS OF SECTION 41-2170.01 IF THE CIGARETTES ARE OR WILL BE STAMPED
43 FOR SALE IN ANOTHER STATE OR ARE PACKAGED FOR SALE OUTSIDE OF THE UNITED
44 STATES AND THAT PERSON OR ENTITY HAS TAKEN REASONABLE STEPS TO ENSURE THAT
45 THE CIGARETTES WILL NOT BE SOLD OR OFFERED FOR SALE TO PERSONS IN THIS STATE.

1 41-2170.08. State preemption
2 THE LEGISLATURE FINDS THAT THE SAFETY STANDARDS PRESCRIBED IN THIS
3 ARTICLE ARE OF STATEWIDE CONCERN. THIS ARTICLE PREEMPTS REGULATION BY A
4 POLITICAL SUBDIVISION OF THIS STATE REGARDING THE CIGARETTE IGNITION
5 PROPENSITY SAFETY STANDARDS PRESCRIBED IN THIS ARTICLE.
6 Sec. 2. Conditional repeal; notice
7 A. Sections 41-2170, 41-2170.01, 41-2170.02, 41-2170.03, 41-2170.04,
8 41-2170.05, 41-2170.06 and 41-2170.07, Arizona Revised Statutes, as added by
9 this act, are repealed if a federal reduced cigarette ignition propensity
10 standard is enacted into law.
11 B. The state fire marshal shall notify in writing the director of the
12 Arizona legislative council of the effective date of this federal
13 legislation.
14 Sec. 3. Requirements for enactment; two-thirds vote
15 Pursuant to article IX, section 22, Constitution of Arizona, this act
16 is effective only on the affirmative vote of at least two-thirds of the
17 members of each house of the legislature and is effective immediately on the
18 signature of the governor or, if the governor vetoes this act, on the
19 subsequent affirmative vote of at least three-fourths of the members of each
20 house of the legislature.